

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES EVANS, JR.,

No. C 10-4778 SBA (PR)

Plaintiff,

**ORDER DENYING PLAINTIFF LEAVE
TO CONTINUE IN FORMA PAUPERIS
STATUS ON APPEAL**

v.

CALIFORNIA SUPREME COURT CHIEF
JUSTICE GEORGE, et al.,

Defendants.

Plaintiff, a California prisoner proceeding pro se, filed a civil rights complaint under 42 U.S.C. 1983 against California Supreme Court Chief Justice George, Justices Kennard, Baxter, Werdegarr, Chin, Moreno and Corrigan, as well as Chief Clerk Ohlrich. Plaintiff claimed that Defendants, who are mostly state supreme court justices, violated his constitutional rights when they issued an August 27, 2008 decision. Plaintiff sought money damages and to be removed from "unlawful CDC&R custody/jurisdiction." (Compl. at 4.)

In an Order dated April 20, 2011, the Court dismissed the instant case for failure to state a cognizable claim under section 1983. The remaining claim for relief in the form of his release from custody was dismissed without prejudice to raising it in a petition for writ of habeas corpus.

Plaintiff had been granted leave to proceed in forma pauperis (IFP) in a separate Order.

On May 2, 2011, Plaintiff filed a notice of appeal.

In a Referral Notice dated May 12, 2011, the Ninth Circuit Court of Appeals referred this case to the district court "for the limited purpose of determining whether in forma pauperis status should continue for this appeal whether the appeal is frivolous or taken in bad faith." (Ninth Circuit May 12, 2011 Referral Notice at 1.)

A prisoner must seek leave to proceed IFP on appeal in the district court. See Fed. R. App. P. 24(a). As in the district court, a prisoner proceeding IFP on appeal will be required to pay the full filing fee. See 28 U.S.C. § 1915(b)(1).

1 If the district court finds that the appeal is frivolous and not taken in good faith and revokes
2 IFP status, or if the prisoner never had such status and moves in the Ninth Circuit to proceed IFP, the
3 Ninth Circuit will conduct an independent review of the record to determine whether the appeal is
4 frivolous. The Ninth Circuit will decide whether to grant the prisoner IFP status. If IFP status is
5 denied by the Ninth Circuit, the prisoner will nonetheless be directed to pay the entire filing fee and
6 to show cause why the appeal should not be dismissed as frivolous. See id. § 1915(e)(2).

7 Plaintiff is appealing this Court's Order which dismissed the complaint for failure to state a
8 claim for relief. As such, Plaintiff's IFP status should not continue on appeal because this Court
9 finds that the appeal is not taken "in good faith" pursuant to 28 U.S.C. § 1915(a)(3). See Coppedge
10 v. United States, 369 U.S. 438, 445 (1962); Gardner v. Pogue, 558 F.2d 548, 550 (9th Cir. 1977)
11 (indigent appellant is permitted to proceed IFP on appeal only if appeal would not be frivolous).

The Clerk of the Court shall send a copy of this Order to the parties and to the Ninth Circuit.

IT IS SO ORDERED.



DATED: 5/13/11

SAUNDRA BROWN ARMSTRONG
United States District Judge

United States District Court
For the Northern District of California

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
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5

6 JAMES EVANS JR.,

Case Number: CV10-04778 SBA

7 Plaintiff,

CERTIFICATE OF SERVICE

8 v.

9 CALIFORNIA SUPREME COURT et al,

10 Defendant.
11 _____/

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on May 16, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
16 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 James Evans F-06497
19 California State Prison - Corcoran
P.O. Box 8800
Corcoran, CA 93212

20 Dated: May 16, 2011

21 Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk
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